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May 17, 1995

VIA HAND DELIVERY
Mr. William F. Caton
Acting Secretary
Federal Communications Commission
1919 M Street, N.W.
Washington, DC 20554

Re: Review of the Commission's Regulations Governing Television Broadcasting (MM Docket No. 91-221) Television Satellite Stations - Review of Policy and Rules (MM Docket No. 87-8)

Dear Mr. Caton:

Transmitted herewith are an original and 4 copies of Comments of Capitol Broadcasting Company, Inc., licensee of television station WRAL-TV, Raleigh, North Carolina, in the above-referenced proceedings.

Should there be any questions concerning this matter, please communicate with the undersigned counsel.

Very truly yours,

Marvin Rosenberg

Marvin Rosenberg
Counsel for
Capitol Broadcasting Company, Inc.

MR:ik
Enclosures

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BEFORE THE

Federal Communications Commission

WASHINGTON, D.C. 20554

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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF SECRETARY

In the Matter of	)	
	)	
Review of the Commission's Regulations Governing Television Broadcasting	)	MM Docket No. 91-221
	)	
Television Satellite Stations Review of Policy and Rules	)	MM Docket No. 87-8

Directed to: The Commission

COMMENTS OF CAPITOL BROADCASTING COMPANY, INC.

Capitol Broadcasting Company, Inc. ("Capitol"), by its attorney, submits its Comments in the above-captioned proceeding and urges the Commission, in evaluating its Ownership Rules, to fully recognize the necessity to protect the economic viability of local television broadcast stations in order that these stations may continue to effectively program to their service areas. In support thereof, the following limited comments are submitted:

Capitol Broadcasting Company, Inc.

Capitol is the licensee of television station WRAL-TV, Raleigh, North Carolina. On July 15, 1956, the Commission issued a construction permit for a new television station to operate on Channel 5 at Raleigh, North Carolina, to Capitol and on December 15, 1956, the station commenced its initial operation. Since its inception, the station has been owned by Capitol, which was originally controlled by Mr. A.J. Fletcher, and subsequent to his death, control passed to his grandson, James F. Goodmon.

Capitol's broadcast ownership interests in North Carolina include two wholly owned subsidiary licensees: WRAL-FM, Inc., the licensee of WRAL(FM), Raleigh, North Carolina and WJZY-TV, Inc., the licensee of WJZY(TV), Belmont, North Carolina.

Capitol entered into Local Marketing Agreements on March 4, 1994, with the Durham Herald Company, the licensee of WDNC(AM), Durham, North Carolina; on June 8, 1994, with Tar Heel Broadcasting Company, the permittee of WACN(TV), Raleigh, North Carolina; and on June 6, 1994, with Family Fifty-Five, Inc., the licensee of WFVT, Rock Hill, South Carolina.

Comments

General

In its Notice of Inquiry, 6 FCC Rcd 4961 (1991) ("NOI"), in this (MM Dkt 91-221) proceeding, the Commission acted in response to its Office of Plans and Policy's Working Paper No. 26, Broadcast Television in a Multichannel Marketplace, 6 FCC Rcd 3996 (1991) ("OPP Paper"), in which the Commission's staff documented the uncertain future facing over-the-air television broadcasters, particularly smaller-market, independent, and UHF stations. As a result of comments received in response to the NOI, the Commission proposed a number of policy and rule changes, including changes in its television ownership rules, in a Notice of Proposed Rulemaking, 7 FCC Rcd 4111 (1992) ("NPRM"), in 1992. Despite the record established in that proceeding, the Commission's recent FNPRM proposes "a new analytical framework within which to evaluate" its ownership rules applied to television stations. FNPRM at 3, ¶1.

As a long term broadcast licensee with an excellent record of service to its community, Capitol is in an excellent position to respond to the Commission's FNPRM. Based on its long experience in operating television stations, Capitol is well aware of the current problems and economic conditions affecting the broadcasting industry. It submits that its Comments are, therefore, pertinent to the Commission's consideration of the issues addressed herein. Capitol supports retention of the present national ownership limitations in order to assure the continued economic viability of local stations to serve their communities and the elimination of the radio-television cross-ownership, or the one-to-a-market rule.

National Ownership

Capitol fully recognizes the dramatic growth in the availability of video programming (entertainment and non-entertainment) sources to the consumer. As recognized by the FCC's staff four years ago in the OPP Paper, the video marketplace is highly competitive and, since then, it has only become more so. Moreover, it is fully anticipated that there will be continued growth in the sources and amounts of video programming. The number of television stations, particularly UHF stations, grew dramatically in the last decade,[1] as did the number of television signals available over the air in all markets.[2] By 1990, 94% of television households were in markets with five or more television stations available over the air. Additionally, television broadcasters were facing ever-increasing competition from cable, which when the OPP Paper was prepared passed 90% of television households[3] (and by 1993 passed 96% of all

[1]In 1980, there were 734 televisions stations; in 1990, there were 1,093. The number of commercial UHF stations grew by 150% between 1980 and 1990. OPP Paper, 6 FCC Rcd at 4011 & Table 3.

[2]The number of off-air stations available to the median household increased from six in 1975 to ten in 1990. OPP Paper, 6 FCC Rcd at 3999.

[3]OPP Paper, 6 FCC Rcd at 3999-4001.

television households in the U.S. and 62.5% of U.S. TV households subscribe to cable services),[4] as well as from other video and information sources, such as wireless cable, low power television, motion pictures, video cassette recordings, SMATV, and C-Band Satellites.

Since the OPP Paper was prepared, direct broadcast satellite ("DBS") service has been initiated. The DBS service provides new competition and 150 channels of video programming to every single market in the 48 contiguous United States (herein referred to as the "continental U.S.").[5] Although high powered DBS service was initiated less than a year ago, the one millionth DSS™ receive system (necessary to receive the service) was shipped in April, 1995. See Hillebrand, "Sony Prices DBS Systems at $749," Satellite Business News 1, 30 (May 10, 1995). As the Commission recognized in its First Report Implementation of Section 19 of the Cable Television Consumer Protection and Competition Act of 1992 ("1994 Video Competition Report"), demand for DBS receive equipment exceeds the supply. Id. at 7475. The new service can only be expected to expand as new service providers launch their services and additional

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[4] See First Report in CS Docket No. 94-48, Implementation of Section 19 of the Cable Television Consumer Protection and Competition Act of 1992 ("1994 Video Competition Report"), 9 FCC Rcd 7442 at 7451-7452, 7493 (1994).

[5] The Commission notes in the FNPRM at 51, no. 142, that the availability of home satellite dishes may be limited by zoning regulations and homeowner association rules. However, the Commission recently initiated a proceeding (IB Doc. No. 95-59) in which it proposes to change its policies on federal preemption of local land-use regulations that inhibit access to satellite communications. Also, the satellite industry is working on this problem and has been successful in convincing at least one community to change its ordinances once its officials actually saw the 18 inch DBS antenna. Resolution No. 95-1, City of Thousand Oaks, California (1995).

equipment manufacturers begin selling systems.[6] Moreover, hardly a day passes that new alliances, deals, and joint ventures are not announced whereby video programming, including interactive programming, will be provided over telephone networks, computer online services, and CD ROM. In light of all of these competitive services, the Commission cannot fail to recognize the need to preserve free over-the-air television broadcasting. For, as the Commission knows, it is the television licensee who is charged with an exceptional public interest responsibility.[7] Further, the local television broadcast stations remain as the source primarily looked to by the public for local news and public affairs programming, as well as emergency broadcast information.[8] For example, North Carolina experiences almost annual threats of hurricanes and warnings and storm coverage are extensively provided by WRAL-TV.

On page 31, paragraph 67, of its FNPRM, the Commission recognizes that cable television operators have fewer public interest obligations than do over-the-air broadcast television stations[9]. The Commission states that television stations are required to

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[6]SONY recently announced that it will offer three DBS receive systems. See Communications Daily 12 (May 10, 1995); "Sony Prices DBS Systems at $749," Satellite Business News 1, 30 (May 10, 1995).

[7]For this reason, it is essential that cable television operators and VDT providers be required to carry local television stations.

[8]In its FNPRM, the Commission cited surveys that show that more than one-half of all viewing hours in cable households during the 1992-1993 season were of retransmitted broadcast signals. In addition, more than one-third of all households that could subscribe to cable elect not to do so. FNPRM at 14, ¶26. Rural areas also have less access to cable. In Alleghany County, North Carolina, cable only has a 33% penetration.

[9]While many cable systems may have public educational and governmental ("PEG") access channels, with the exception of large markets, cable television systems do not have a local news channel.

provide programming responsive to issues facing their local community, afford equal opportunities to political candidates, and provide reasonable access to candidates for federal elective office. Further, the Commission recognizes that, while DBS has public interest obligations, MMDS, SMATV and VDT do not.[10]

To preserve a strong local television broadcast service, the Commission should retain the present national ownership limitations.[11] A failure to so act by the Commission will result in adverse consequences to the financial stability of the local station. Increases in ownership caps and the numerical station ownership limits will only exacerbate the present, and ever increasing, competitive market in which the local station is engaged. The Commission requests comment and evidence regarding differences in programming presented by a group owner versus an individual station owner. These differences in the acquisition of programming are continuously being demonstrated in both network affiliation relationships and the sale of syndicated programming. Long term affiliation contracts are now being signed with terms often as long as ten years. In these contracts, networks have been able to dictate much stronger terms with regard to the preemption of network programming by the affiliate. Stations such as WRAL-TV, which have preempted network programming in the past for public affairs and sports (WRAL-TV preempts network programming in prime time to broadcast ACC basketball) programming deemed by the licensee to be of greater significance or

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[10]In Daniel Cablevision, Inc. v. U.S., 835 F. Supp. 1 (D.D.C. 1993), Judge Jackson held that the requirement imposing mandatory programming on DBS was not supportable under the First Amendment.

[11]To further assure stability in television ownership, the Commission should reinstate the 3 year holding period. Any profit from the sale of a station held for less than 3 years should benefit the Federal government and not reward the entrepreneur.

interest to its audience than the preempted network programming, are likely to find it increasingly more difficult to engage in such preemptions in the future. Moreover, because of the recent trend by networks to enter into affiliation agreements with group owners which encompass all of the group owners' stations, it will become more difficult for individual station owners to retain or secure network affiliations.

Increases in the number of stations nationally that a licensee may hold will also exacerbate the problem which stations such as WRAL-TV face in the market for syndicated programming. While, as the Commission states, group owners may not necessarily obtain more favorable terms in the acquisition of syndicated product, desirable syndicated product becomes unavailable to the owner of an individual station, or even the owner of stations in two markets, because of the syndicator's ability to place the program in a number of markets through a single transaction with a large group owner, particularly if the syndicator is experiencing difficulty in placing the program in one of the markets served by the group owner. By tying its markets together, the group owner can exercise leverage on the syndicator so that the syndicator cannot choose to sell the program to other licensees in any of the markets in which the group owner operates. Capitol has had this experience with such syndicated programs as Oprah and Martin. The difficulty in obtaining desirable programming results in a weakening in the revenue base of a station which often provides greater service to its community because the licensee is locally owned or concentrates to a greater degree on its sole or limited number of markets. Certainly, if the Commission were to increase the national ownership limits, it should require networks and syndicators to deal on a market-by-market basis.[12]

As a long-term broadcaster which takes its commitment to its audience very seriously, Capitol supports the retention of what the Commission terms "direct techniques" to assure diversity. Capitol supports the continuation of requirements to ascertain local community problems and needs and to present programming responsive to those problems and needs. In addition to its substantial news and public affairs programming, the station and its personnel actively engage in many community activities.

Cross-Ownership

The FCC's present cross-ownership rule on radio-television is no longer necessary to ensure diversity in the local programming market because of the differences in program services provided by radio and television. Capitol's opposition to changes in the national multiple ownership limitations is not inconsistent with its calling for the elimination of the radio-television cross-ownership rule. As is evident, Capitol's concentration is on preserving effective competitive local market stations.

Broadcasters who have been able to combine radio and television staffs and facilities have experienced economies of operation that have ensured the survival of broadcast stations and enabled the stations to provide news and other programming that would not otherwise be available. In Mansfield, Ohio, for example, the licensee of a UHF television station acquired that station after seeking a waiver of Section 73.3555(b) of the Commission's Rules. The UHF station was a "failed" station, having been off the air for three years. The Commission's records reflected that the previous licensee was

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[12]The Commission should examine the necessity for a Rule in light of its staff action in Letter, released April 20, 1995, DA 95-855.

burdened with a large upfront investment exceeding five million dollars, inability to secure cable carriage in a heavily penetrated market, and fierce competition by larger city stations (from Cleveland and Columbus) whose signals were imported by cable. The previous licensee had vigorously sought buyers, mergers, and new funding; but every initiative failed because of the cable carriage problem and the proximity of Mansfield to the Cleveland and Columbus markets. In the last extension of authority to remain dark, issued March 2, 1992, the Commission's staff noted that "the nonoperational status of the station for such a prolonged period does not serve the public interest."

The staff granted the requested waiver and assigned the license for the Mansfield UHF television station to an entity whose owners had ownership interests in the licensees of an AM, an FM, and a low power TV broadcast station. Today the UHF and the AM station survive only because of the combined operations of the AM, FM, and TV. The licensees of these affiliated stations are able to operate from one building, using one traffic department, one accounting department, one engineering department, and one news department. These economies of operation have been the key to the financial survival of both the AM and the UHF TV station.

It should be noted that the UHF station is included in the Cleveland, Ohio, DMA, although Mansfield is 70 miles southwest of Cleveland. Mansfield is also four miles north of the Columbus DMA. Both Cleveland and Columbus stations are carried on Mansfield area cable systems, which cross the DMA boundaries, and the Mansfield UHF station must therefore compete with Cleveland and Columbus TV stations. What the Mansfield UHF station can offer is a unique selling situation and unique programming that is not carried on any other station.

The economies of operating the AM, FM, and TV together have permitted the licensee of the UHF to offer a television station that is a news and informational station, with news, weather, sports, and public affairs programming. The station **locally produces five to six hours of news programming each day**, Monday through Friday (less on weekends), in addition to its other news, sports, weather, and public affairs programming. This programming is not available on any other station and absolutely would not exist in the station's market were it not for the ability of the UHF licensee to share staff and facilities with its affiliated radio stations. The combined news operation also produces news programming for the FM station (which has a music format) and all of the programming for the AM station, which is an all news and sports station.

In the Raleigh-Durham market, Capitol operates WRAL-TV and WRAL(FM). Pursuant to a Local Marketing Agreement, Capitol Radio Networks, Inc., a subsidiary of Capitol, operates WDNC(AM), Durham. The operation of these three stations has enabled Capitol to increase diversification in the market. Stations WRAL-TV and WRAL(FM) are operated independently of each other, except that, during, afternoon segments, WRAL(FM) carries brief news reports aired by WRAL-TV news personnel. WDNC(AM) operates independently of the other two stations in that it primarily directs its programming to Durham. WDNC(AM)'s basic format is news, talk and sports. Duke University and Durham Bulls games are presented on WDNC. However, as to all three stations, it is the knowledge of the area and the experience in the market of Capitol management which results in successful station operation and enables all three stations to be so responsive to their service area.

The Commission permits, on a waiver basis, cross-ownerships in the top 25 markets, where there are 30 or more voices, if the waiver request involves a failed station, or if the waiver request presents a satisfactory public interest demonstration. Capitol is unaware of any Commission decision which has found, subsequent to a permitted transfer or assignment, that consequences adverse to the public interest have resulted. Capitol supports the elimination of the rule using local limits of each service to prevent undue concentration.

Conclusion

For the reasons stated above, Capitol urges the Commission to make no changes in the present national multiple ownership limitations. At the same time, the radio-television cross-ownership Rule should be eliminated because it will strengthen local market television and radio stations and add to diversity in the market.

Respectfully submitted,

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